

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ROSETTA SANZ,

Plaintiff,

No.

v.

ASHLEY WHITEHOUSE, RICHARD COLHOUER,
SAMANTHA CASTRONE, AND
PROGRESSIVE AMERICAN INSURANCE COMPANY,

Defendants.

NOTICE OF REMOVAL

Pursuant to 28 USC §§ 1332, 1441(A) and 1446, Defendant, Progressive American Insurance Company (Progressive) gives notice of removal of the above-captioned matter from the Second Judicial District Court, County of Bernalillo, State of New Mexico. In support of this notice, Defendant, Progressive, states that on December 6, 2023, Plaintiff, Rosetta Sanz, filed her Complaint for Personal Injury, Punitive Damages, Bad Faith Insurance Claims Handling, and Statutory Violations against various defendants, including Progressive, in the Second Judicial District Court, County of Bernalillo, in a matter styled *Rosetta Sanz, Plaintiff v. Ashley Whitehouse, Richard Colhouer, Samantha Castrone, and Progressive American Insurance Company, Defendants*. Plaintiff's Complaint alleges injuries, as well as various allegations involving common law bad faith and claims under New Mexico's Insurance Code and Unfair Practices Act.

1. This case arises out of an accident which occurred in Bernalillo County, New Mexico on March 30, 2022. The District Court of the United States has original jurisdiction over

this action pursuant to 28 USC § 1332 because it is a civil action between citizens of different states, and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

2. This Notice of Removal is timely. Defendant, Progressive, was served with Summons and Complaint on December 20, 2023, through the Office of the New Mexico Superintendent of Insurance.

3. Defendants Ashley Whitehouse and Samantha Castrone consent to removal of this action. The written consent forms of Ashley Whitehouse and Samantha Castrone will be filed of record. Richard Colhouer is a Progressive employee who, upon information and belief, has not yet been served. Nevertheless, it is anticipated that he will consent to this removal although efforts to specifically obtain a signed consent have been unsuccessful because he is on vacation at the time of this filing and is unavailable for that purpose. Progressive is informed that Mr. Colhouer will return from vacation on Monday, January 22, 2024. Progressive will, at that time continue its efforts to obtain his written consent and will file that as soon as it is obtained.

4. As the incident set forth in the state action occurred in the County of Bernalillo, State of New Mexico, venue in this Court is proper.

5. At all relevant times, as alleged, Plaintiff was a resident of the State of New Mexico.

6. All individual defendants are residents of the State of Florida. Progressive is a resident of the State of Ohio.

7. Complete diversity exists between Plaintiff and defendants.

8. This lawsuit arises out of a vehicular accident in which Plaintiff claims personal injuries as well as statutory and common law bad faith or unfair claims practices against all defendants, together with claims for punitive damages. This notice of removal asserts that, upon information and belief, the amount in controversy in this matter exceeds the sum of \$75,000 in

damages based on the amount of Plaintiff's last settlement demand and in view of the allegations in the Complaint.

9. Specifically, prior to the filing of suit, on September 29, 2023, Plaintiff made a demand for \$237,450 to all defendants in exchange for full releases of all claims arising out of this controversy. (See, Exhibit "A," settlement demand letter from Plaintiff counsel to defendants.)

10. Pursuant to 28 USC §§ 1332 and 1446 (D), Defendant Progressive is filing this Notice of Removal with the clerk for the Second Judicial District Court, County of Bernalillo, State of New Mexico, which is where this action was originally filed. Copies of the Notice to the Second Judicial District Court, together with this Notice of Removal, are hereby being served upon counsel pursuant to 28 USC § 1332 and 1446 (D).

11. Copies of all pleadings, process, and orders in the state court lawsuit are attached hereto.

WHEREFORE, Defendant, Progressive American Insurance Company removes the above-titled action now pending in the Second Judicial District Court, County of Bernalillo, State of New Mexico to this Court such that this Court assumes full jurisdiction over this matter as provided by law.

Respectfully submitted

CUDDY & McCARTHY, LLP

BY: /s/ Scott P. Hatcher

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*Attorneys for Defendant Progressive
American Insurance Company*

CERTIFICATE OF MAILING

The undersigned hereby certifies he transmitted a true and accurate copy of the foregoing to:

Thell Thomas, Esq.
Law Offices of Thell Thomas
111 Tulane Dr. SE
Albuquerque, NM 87106
tthomasjd@gmail.com
Attorney for Plaintiff

on this 19th day of January, 2024.

/s/ Scott P. Hatcher
Scott P. Hatcher

TLD W/CD/USB

OCT 02 2023

A166077

Law Offices of Thell Thomas, LLC

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 Albuquerque, NM 87106
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 Tax Identification: 47-0997133

September 29, 2023

VIA FAX: 1-833-905-1752

Progressive Insurance
ATTN: Dylan White
 600 North Westshore Blvd. Suite 250
 Tampa, FL 33609

RE: Rosetta Sanz's underinsured motorist claim
 Claim no.: 228974563
 Date of Loss: March 30, 2022
 Your insured: Richard Price
 Driver: Anne Marie Mance

Dear Dylan,

Please accept this as a clear and unequivocal policy limits settlement demand on behalf of Rosetta Sanz. This demand expires on October 30, 2023 at 5:00pm MST. This is the only opportunity that you will have to settle this case for the policy limits and avoid exposing Progressive to the risk of a jury verdict and judgment more than the policy limits.

Rosetta does not want to go through litigation. She is not a greedy, lawsuit-happy person. Rosetta is a kind woman who was injured in a hit and run while riding passenger in a vehicle with your insured.

If we must move forward with litigation, we will ask a jury for much more than Richard Price's policy limits. Please make sure that all money decision-makers and insured defendants read this demand. We have made a demand for **\$237,450.00**. If this amount is greater than your insured's policy limits, then the settlement demand is for whatever those policy limits might be.

The bottom line is that our client is providing you with an opportunity to resolve this case for an amount of money that is far less than the actual damages that can be recovered if this case proceeds with further litigation and trial, and that does not require that insured policyholder pay a single penny over what the insurance coverage is.

EXHIBIT A

Rosetta Sanz was seriously injured in the car crash with Anne Marie Mance caused by an unknown driver on March 30, 2022. Below is a summary of your insured's liability, and a summary of Rosetta's injuries, medical treatment, medical expenses, and damages for your review. A copy of the station report, and copies of Rosetta's medical records and bills are also attached for your review.

Underlying Liability: On March 30, 2022, Anne Marie Mance and Rosetta Sanz were traveling northbound on Wyoming Blvd NE, waiting to turn left onto westbound Copper Blvd NE. Since they had the green turn arrow, Anne Marie proceeded through the intersection. As they were about the exit the intersection, an unknown black Chevy Sedan going Southbound on Wyoming Blvd NE proceeded through the intersection and struck Anne Marie's vehicle on the rear passenger door and tire area. The black Chevy Sedan fled the scene of the crash.

There was no on-scene police report made, but shortly after the crash Anne Marie made a station report with the New Mexico State Police Department. A copy of the station report is attached.

- a.) **Damages to Rosetta Sanz:** Rosetta suffered injury to her neck, shoulders, pelvis, right hand and arm, knees, and lower spine.

PRESBYTERIAN HEALTHCARE EMERGENCY DEPARTMENT: On April 2, 2022, Rosetta visited the emergency department at Presbyterian presenting with pain to the right side of the body, with localized pain in her right hip and right forearm, mild tenderness in the medial forearm, mild tenderness in the right hip, and mild tenderness to touch on her right trapezius. She had no limitation with her range of motion. Attending physician Dr. John Cash Davis ordered x-rays of Rosetta's right knee and right hip to rule out any fractures.

Rosetta's knee x-ray showed no fracture or dislocation and no soft tissue foreign body identified. There was some mild osteoarthritis and small joint effusion. Rosetta's hip x-ray showed no pelvic, sacral, or hip fracture. The hips were slightly rotated to the left and there was mild osteoarthritis of the hips. There was some mild degenerative disease of the visualized lumbar spine. Reading physician Dr. Sean Mullen concluded there was no acute bony abnormality of the right hip/pelvis or right knee, degenerative change of the hips and knee, and no joint effusion at the knee.

Rosetta was discharged to home care and asked to return if she had recurrent or worsening hip or knee pain, forearm or upper extremity pain, confusion, nausea, vomiting, chest pain, or difficulty breathing.

CPT CODES: 32000070, 32200011, 45000152, 99284

SUNCENTER MEDICAL OFFICES: On April 8, 2022, Rosetta had her first visit at the Suncenter Medical Offices. Rosetta saw many different providers and received various forms of treatment at this facility. She presented with aching, tightness, and pins-and-needles sensations in her neck, her right hip, and her lower back—all of which had intensified since the crash. She

rated her pain as 5-6/10 on the pain scale when moving. At that time, her neck pain was so severe that it prevented her from sleeping through the night.

Rosetta began treatment with Dr. Sophia Swenson, DOM, LMT to help treat pain in her hips, neck, back, hands, elbows, and right shoulder. Dr. Swenson treated Rosetta using various types of trigger point manipulation to the occipital base, myofascial release, upper trapezius, erectors, gluteus muscles, the IT band, and the sciatic region. Dr. Swenson also performed acupuncture weekly for 6 weeks. Rosetta followed through with Epsom salt baths and stretches at home.

Rosetta also saw several licensed massage therapists at Suncenter, who treated her for range of motion, various fascial restrictions, whiplash effects, occipital, levator, clavicle, scalene, and scapular pain and tightness, tightness and tenderness in the lateral neck and scalp, pain in her hip and ankles, and chronic pain and limited range of motion in her head and neck. Treatment involved compression, traction, palpation, stretching, massage for muscle relaxation, and trigger-point manipulation. Rosetta was encouraged to stretch, meditate, hydrate/consume electrolytes, and do breathing exercises at home; over time, she saw improvement in her neck pain.

By June, Rosetta's neck pain no longer interfered with sleeping. However, her back pain worsened. On June 16, 2022, Rosetta informed Dr. Trezza of a now-constant pain in the lower back at level 5/10 on the pain scale, which Rosetta described as "aching," "numbness," and "pins-and-needles."

In July, Rosetta disclosed she was experiencing constant pain to her lower back. Rosetta described this pain as "intermittent" and "nagging." Her neck, extremely tight still, continued to hurt her; she rated her neck pain at 5/10 when present. Rosetta continued treatments until February 2023 for pain in her neck, shoulders, lower back and right hip. After several weeks of regular massage therapy appointments and self-care instruction from these providers, Rosetta felt that she had improved, although she still experienced tightness and pain in the neck and shoulder when turning her head, and continued pain in her right hip.

PROCEDURE CODES: 99211, 99212, 99213, 97813, 97814, 97016, 99211, 97140, 99214, 97026, 99202

DIAGNOSIS CODES: V43.61XS, M25.552, S73.1025, M54.2, S12.4XXS, M54.6, M54.5, M79.641, M79.642, R20.2, S13.4XXS

SANDIA CHIROPRACTIC CARE PC: On April 14, 2022, Rosetta started treatment at with Dr. Gretchen Gilbertson, P.C. at Sandia Chiropractic Care for acute/chronic, moderate, frequent pain and occasional numbness in her low back, neck, right arm, and right leg caused by the injuries she sustained in the crash. Rosetta presented with neck pain, shoulder pain, pain in the upper arm/elbow, hand pain, low back pain, pain in upper leg or hip, pain in lower leg or knee, swelling and stiffness of the joints, headaches at the base of her skull, and muscular incoordination. She reported that a tingling pain radiated from her shoulders and down her arm, which experienced weakness and numbness. Over the course of weekly treatments, Dr. Gilbertson categorized Rosetta's symptoms: pain, aching, tightness, and tingling. Dr. Gilbertson

treated Rosetta using subluxation (a form of chiropractic manipulative therapy), diathermy, neck isometrics, electrical stimulation, mechanical traction, ultrasound, cranial-sacral massage, vibrational massage, lumbar distraction techniques, and additional treatments to the shoulders, elbows, wrists, hands, hips, knees, and ankles. By the end of treatment in May 2022, Rosetta's pain was less intense than immediately following the crash, but still chronic.

PROCEDURE CODES: 99203, 98942, 98943, 97032, 97012, 97035, 97032, 97024, 97110

DIAGNOSIS CODES: M99.00, M99.01, M99.02, M99.03, M99.04, M99.05, M99.07, M25.611, M25.612, S13.4XXA

MODERN PAIN AND SPINE: On May 5, 2022, Rosetta began treatment with Athanasios K. Manole, M.D. at Modern Pain & Spine for injuries sustained in the April 30, 2022 crash. Rosetta continued treating with Dr. Manole for several weeks. Dr. Manole reported that Rosetta presented with an exacerbation of her underlying osteoarthritis throughout her joints, especially at the cervical spine and lumbar spine due to her recent motor vehicle accident; his assessment revealed that Rosetta was suffering from Post Motor Vehicle Accident Condition, Exacerbation of Underlying Osteoarthritis Throughout Joints, Cervical Myofascial Strain with Exacerbation of Cervical Facet Arthropathy, Lumbar Contusion, and Lumbar Myofascial Strain.

According to Dr. Manole's report, Rosetta presented with pain throughout her body, especially at the cervical spine, and muscle spasms at the neck and lower back. Rosetta reported pain in her head, in the cervical region, in both shoulders, in both hands, in the thoracic region, lumbar region, and in both hips and knees. A physical examination revealed tenderness to palpation of the bilateral cervical paraspinal muscles, muscle spasm in the bilateral cervical paraspinal muscles, and tenderness to the cervical facet joints, decreased strength at the leg extension of the right knee, which he treated with trigger point injections at the levator scapulae, splenius capitus, trapezius, and rhomboids. Following the injections, an insulated hot pack was placed on the patient's neck and upper back.

Rosetta also saw Frank Flores, PTA, at Modern Pain & Spine; Dr. Manole personally reviewed and approved Flores' treatment plan for each PT session. Flores used manual therapy to address musculoskeletal tissue weakness, congestion, soft tissue mobilization, facilitation of muscles, pain management, lymphatic management, swelling management, scar mobilization, myofascial correction, and mechanical joint correction or support.

Rosetta's overall treatment plan with practitioners Dr. Manole and Frank Flores included manual therapy, kinesiology therapeutic tape, therapeutic exercises, and physical therapy for strengthening throughout her extremities, a home exercise program, electrical stimulation, and trigger point injections with heat applied. Dr. Manole recommended Rosetta continue with acupuncture, massage, and other alternate modalities. Rosetta finished treatment at Modern Pain & Spine in June, 2022.

PROCEDURE CODES: 97140, 97014, 97110, 72100, 73030, 73110, 73120, 73130, 73522,

99245, 20553, J2001, 97010, 72050, 72070, 76310, 29799, 29200-51, 99215

DIAGNOSIS CODES: M47.812, M25.551, M25.519, M54.2, M25.552, M25.531, S16.1XXS, M54.6, M25.532, M47.816, M25.571, S39.012A, M79.641, M79.642, R10.2

SOUTHWEST INTEGRATIVE HEALTH CENTER: On October 31, 2022, Rosetta began treatment at Southwest Integrative Health Center for injuries sustained in the crash. Rosetta presented with continued pain in her spine, hips, and knees, and evaluated her pain at 5/10 in the following areas: neck pain, bilateral upper shoulders, mid back, lower back, right hip, left hip, head (worse on the right side), and both knees. Rosetta disclosed having intermittent difficulty picking up her right foot and had tripped and fallen several times as a result, which did not occur before the accident. Rosetta also expressed experiencing numbness in both hands and her right hand would lock episodically.

Robert C. Jones, DC, APC performed an examination and noted that Rosetta's grip strength was normal, her cranial nerves were intact, her pupil reflexes were normal, there was no nystagmus, her deep tendon reflexes of the upper and lower extremities were normal, as were the dermatomes in both extremities. Myotomes were also normal to the touch. There were no indications of vertebral artery insufficiency, vertigo, dizziness, or nausea. Dr. Jones noted that Rosetta's cervical and dorsolumbar range of motion was visibly restricted, and palpation of the paraspinal muscles showed moderate to severe spasm of the mid to upper thoracic spine and cervical spine.

Rosetta completed treatment in March 2023. Dr. Jones' final evaluation of Rosetta's condition indicated that, while Rosetta did see 60-90% pain improvement in various affected areas, she continues to have ongoing pain and joint dysfunction in various areas of her body since the accident. Dr. Jones opined that Rosetta's ongoing pains are very likely associated with the March 30, 2022 accident; as an older individual, Rosetta will heal slower and probably not completely with regards to soft tissue damage. Dr. Jones recommends periodic conservative care to manage Rosetta's ongoing aches and pains.

PROCEDURE CODES: 98941, 97140, 98943, 29540

DIAGNOSIS CODES: S13.8XXA, S23.BXXA, S33.8XXA, M70.70, S83.8X9A, M79.10, M62.838, S43.409, M99.06, M25.571, S33.8XXD, S23.8XXD, S13.8XXD, S43.409D

Rosetta Sanz has incurred the following medical expenses:

Presbyterian Healthcare Emergency Department	\$1, 702.00
Suncenter Medical Offices	\$12, 161.00
Sandia Chiropractic Care	\$2, 295.00

Modern Pain and Spine	\$4, 361.00
Southwest Integrative Health Center	\$3, 226.00
TOTAL:	\$23,745.00

a.) Pain and Suffering and Loss of Enjoyment of Life: Prior to the crash, Rosetta's friends, and neighbors report that she was able-bodied, independent, and involved in her community. She was described by one longtime friend as social, "zippy" and "happy". She had no trouble caring for her home, herself, or her pets. The injuries she sustained in the crash have since caused significant pain, limited her range of motion, and affected her ability to perform daily activities like housework, yard work, cooking, lifting, sitting, standing, and sleeping. Rosetta reports that she wakes up in pain about 4 times per week and must exercise a "mind over matter" force of will to ambulate.

The crash aggravated Rosetta's prior hip injury, and she now must consider the eventuality of hip replacement surgery. Rosetta is unable to perform housework and maintain her personal standard of cleanliness in her home due to her hip pain and muscular incoordination caused by her injuries, and she no longer walks her dogs or plays with them. Rosetta reports that she has very little energy or stamina and that all physical activities take much longer than before the crash. As her neighbor notes, her tasks take much more effort and determination due to the pain and complications the accident caused. Since the accident, Rosetta has been unable to continue her volunteer work at the community center; Rosetta used to walk around and teach classes at the Senior Center before the accident. Since the accident, Rosetta is no longer able to go on these or other regular outings due to her pain and lack of energy. Moreover, Rosetta is self-employed as a personal organizer and *feng shui* master, and she has not been able to network, advertise and cultivate new clientele since the accident.

Under New Mexico law, Rosetta Sanz is entitled to recover medical bills and pain and suffering. Moreover, New Mexico also allows loss of enjoyment of life. *See Sena v. New Mexico State Police*, 119 N.M. 471, 477, 892 P.2d 604, 610 (ct. App.1995) (holding Adamages are recoverable for the value of the loss of enjoyment of life itself whether or not the injured party is deceased). The *Sena* Court clarified that there are two aspects of non-pecuniary damages in the concept of fair and just compensation, pain and suffering devolves from that which the victim must newly endure, and loss of enjoyment of life is that which the victim can no longer enjoy. *Id.* (Emphasis added). Given the injuries and damages sustained by Rosetta Sanz, she is entitled to recover damages for the loss of enjoyment of her life.

Punitive Damages: The other driver acted without any care for himself, other drivers, and most importantly, Rosetta and Anne Marie. His unconsidered decision to run the red light and smash into their vehicle, and subsequent unlawful fleeing of the scene has left significant harm to Rosetta's life. At Rosetta's age, it is very difficult to overcome these types of injuries and fully

heal. She has had to alter her lifestyle and reduced her activities due to the negligent and reckless behavior of the other unknown driver. Rosetta will also need significant future medical care for the injuries sustained in the hit and run car crash.

Request for Payment on the Insurance Policy: Rosetta Sanz is entitled to recover damages for his medical expenses in the amount of \$23,745.00, pain and suffering in the amount of \$71,235.00, and loss of enjoyment of her life in the amount of \$47,490.00. Rosetta is also entitled to recover punitive damages in the amount of \$94,980.00

Our client, Rosetta Sanz, has authorized us to resolve all ongoing for **\$237,450.00**. If this demand exceeds your insured's policy limits, please immediately tender your insured's policy limits. This kind offer of settlement expires.

Sincerely,

Thell Thomas

enc: as stated
cc: Rosetta Sanz

Retail



33609

\$5.15

RDC 01 0 Lb 2.00 Oz R2304H108589-99

Law Offices of Thell Thomas, LLC
111 Tulane Dr. SE
Albuquerque, NM 87106



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SEP 29, 2023

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A166077

Progressive Insurance

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